IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5665 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

MAHMAD ABDUL AHMED

Appearance:

1. Special Civil Application No. 5665 of 1990

MR HARDIK C RAWAL for Petitioner No. 1

RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 26/03/2002

ORAL JUDGEMENT

Heard learned advocate Mr. H.C. Raval for the petitioner. Notice of rule issued by this court has been served upon the respondent workman but the respondent

workman has not appeared before this Court either in person or through any advocate.

By way of this petition, the petitioner has challenged the award made by the labour court concerned in reference NO. 472 of 1986 dated 30th December, 1989 wherein the labour court concerned has directed the corporation to include the name of the respondent in the wait list of workman as per his original number in such wait list of badli worker. In this petition, rule has been issued by this Court on 8.9.1990.

Today, learned advocate Mr. Raval for the corporation has submitted that the labour court has committed gross error in reinstating the respondent as badli worker once the misconduct is found to be proved against the workman; that the denial of back wages cannot be considered to be punishment since the same has not been claimed by the workman and in view of this, some further punishment ought to have been imposed by the labour court while exercising the powers under section 11A of the I.D. Act,1947. According to him, in view of the award made by the labour court and also in view of the fact that no interim relief has been granted by this court while admitting this petition, the corporation must have reinstated the respondent workman in service by inserting the name of the respondent in the wait list of badli workers. Mr. Raval has further submitted that the charge against the respondent was to the effect that he had not collected fares from 9 passengers and had not issued tickets to the said passengers. According to him, in view of such misconduct, his name was removed from the wait list by order dated 14th February, 1985. Before the labour court, the respondent has accepted the legality, validity and propriety of the departmental inquiry but it was his defence that those nine passengers were allowed by the driver at his own responsibility and, therefore, he had allowed those nine passengers and has not recovered the fares from the said passengers. In view of such deposition of the workman before the labour court at Exh. 13, the labour court has come to the conclusion that there was some collusion between the driver and the conductor and has ultimately come to the conclusion hat looking to the misconduct in question, at the most, it amounts to negligence and, therefore, reinstatement by way of reinsertion of his name in the wait list of badli workman has been granted in exercise of the powers under section 11A of the I.D. Act, 1947. However, looking to the findings recorded by the labour court, according to my opinion, since the labour court has found that there is some negligence on the part of the workman resulting

into loss of revenue to the corporation, the labour court ought to have imposed some punishment while exercising such powers. According to my opinion, since the workman has foregone his claim for back wages, denial thereof cannot be considered to be punishment. Therefore, while confirming the award of reinstatement of the respondent, some punishment is required to be imposed and to that extent, the award is required to be modified.

For the reasons recorded hereinabove, this petition is allowed. The award made by the labour court in Reference No. 472 of 1986 dated 30th December, 1989 is confirmed in so far as it relates to reinstatement of the respondent workman but the petitioner is further directed to impose punishment of stoppage of two annual increments of the respondent workman future effect. Rest of the directions issued by the labour court under the award in question have not been disturbed by this Court. Rule is made absolute in terms indicated hereinabove with no order as to costs.

26.3.2002. (H.K. Rathod,J.)